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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/496,069	02/01/2000	Ken Yoshimura	1924.63567	5672

7590 11/12/2002

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EXAMINER
TANG, KENNETH

ART UNIT	PAPER NUMBER
2127	

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/496,069	Applicant(s) YOSHIMURA ET AL.	
	Examiner Kenneth Tang	Art Unit 2127	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 6 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 February 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not made explicitly clear in the claims if "queue is shorter" refers to the queue length is shorter or the queue length of time is shorter, for example.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (hereinafter Chen) (US 5,553,235) in view of Gerardin et al. (hereinafter Gerardin) (US 6,222,822 B1), and further in view of Adl-Tabatabai (US 6,170,083 B1)

While claims were rejected under 35 USC 112, 2nd paragraph, in order to advance prosecution, claims will be treated on the merits in view of the examiner's best understanding of the disclosure and the prior art.

Referring to claim 1, Chen teaches a system diagnosis apparatus comprising:

- an acquisition unit which acquires information on a utility rate of the system resources and a queue for the system resources that make the system of a computer ("capturing performance statistics", see Abstract, and "two means of acquiring information about the monitoring of consoles and instruments", col. 7, lines 10-16, and "statistics for a system resource", col. 22, lines53-55, and "two statistics: level and queue", col. 69, lines 34-35); Runtime/measuring time is a performance statistic and is a measure of utility.
- a memory unit which stores thresholds of the utility rate and the queue, which thresholds represent the limits at which the system resource exhibit a desired performance ("threshold alarm value", "stored in a record", col. 16, lines 6-19, and "recording subsystem 20", see Figure 5, and "information", "monitoring console's configuration", "stored in the recording file 100", col. 6, line 66, and "values are individual statistics", "recorded", col. 8, lines 27-33, "capturing performance statistics", see Abstract, and "two statistics: level and queue", col. 69, lines 34-35); It is inherent that a computer system has a memory unit (col. 3, lines 17-20).
- a diagnosis unit which diagnoses the performance of the system resource ("apparatus", "performance diagnostics", See claim 11).

Chen fails to explicitly state that the diagnosis of the performance of the system consists of:

- system resource has lowered when the utility rate is higher than the threshold of the utility rate and the queue is shorter than the threshold of the queue, or diagnoses that the number of the system resources is insufficient when the utility rate is higher than the threshold of the utility rate and the queue is longer than the threshold of the queue

However, Gerardin teaches using a queue threshold which detects whether the queue is longer than the queue threshold ("queue threshold detector", "threshold exceeded-signal", "queue occupancy exceeds a predetermined threshold level", see claim 1). In addition, the reference of Adl-Tabatabai teaches a utility value being compared with the threshold value at step 480, and if the threshold value is exceeded, the system resource is lowered and then needs to be optimized ("execution", "threshold value", "optimized", col. 6, lines 25-28). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the features of a threshold compared to a queue and utility level for the reason of optimizing the run time of the system by determining the limit or defining point where optimization needs to begin in the diagnosis.

Referring to claim 2, Chen teaches:

- a system resource determining unit which determines a system resource capable of giving the desired performance when it is diagnosed by the diagnosis unit that the performance of the system resource has lowered, or determines a number of the system resources capable of giving the desired performance when it is diagnosed by the system diagnosis unit that the number of the system resources is insufficient ("library", "performance

monitor recordings", "diagnosis", "poorly performing data processing systems", "capturing performance statistics", see Abstract);

Adl-Tabatabai inherently teaches:

- an ordering unit which orders the system resource determined by the system resource determining unit as the system resource for upgrading.

Adl-Tabatabai discloses using and comparing a threshold to determine when to order the system for optimization ("execution", "threshold value", "optimized", col. 6, lines 25-28). It is inherent that the processor makes the order for optimizing.

Referring to claim 3, Chen teaches:

- where the ordering unit transmits, utilizing a network, the ordering information on the system resources to a device installed at the supplier of the system resources (network, see Figure 8, item 200, network send/rcv interface 70, and data sources 210, and "identifying data suppliers", col. 12, line 28). The computer processor is a unit that makes the order.

Referring to claim 4, Chen inherently teaches:

- a notifying unit which notifies, utilizing a network, the result of diagnosis by said diagnosis unit to the user of the system.

Chen discloses "receiving notification of a defective condition" (see Claim 10). Chen also teaches a "performance monitor tool" which interacts with the user for monitoring (diagnosis)

and also provides an interface for interaction (notification) with a user to control processes within a data processing system (col. 4, lines 60-67).

Referring to claim 5, Chen teaches the following:

- a memory unit storing in correlation to each of the system resource a flag indicating necessity or not of upgrade, which necessity is judged by the user;
- ordering unit orders only the system resources that have a flag that indicate necessity of upgrade out of the system resources determined by the system resource determining unit as the system resources for upgrading.

Claim 5 is rejected for the same reasons as stated in claim 1. It is inherent that a flag is used to represent a boolean variable (necessity or not of upgrade).

Referring to claim 6, Chen teaches the following:

- acquisition unit acquires information on a response time of the system resources in addition to the utility rate and the queue
- memory unit stores a threshold of the response, which threshold represents the limits at which said system resource exhibits a desired performance, in addition to the thresholds of the utility rate and the queue
- diagnosis unit makes the diagnosis on the basis of the result of comparison between the acquired response time and the threshold of response time.

Claim 6 is rejected for the same reasons as stated in the rejection of claim 1. In addition, Chen discloses that the response time is monitored in the system ("concerned with monitoring of the response time" by the "Dynamic Data Supplier program", col. 75, lines 10-19).

Referring to claims 7 and 8, they are rejected for the same reasons as stated in the rejection of claim 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (703) 305-5334. The examiner can normally be reached on 9:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703)305-8498. The fax phone numbers for the organization where this application or proceeding is assigned are none for regular communications and none for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is none.

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October 29, 2002

JOHN A. FOLLANSBEE
PRIMARY EXAMINER